

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:20-CR-00249-RJC-DCK

USA

v.

ANTHONY TOMMY FOSTER (1)

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ORDER

THIS MATTER is before the Court upon the defendant's Motion for Judgment of Acquittal pursuant to Rule 29(a) of the Federal Rules of Criminal Procedure, (Doc. No. 99), and the government's response in opposition, (Doc. No. 100).

In the instant motion, the defendant challenges the jury's verdict claiming there was insufficient evidence to convict him under 21 U.S.C. §§ 841(a)(1) and 846. (Doc. No. 99 at 1). "In reviewing the sufficiency of the evidence following a conviction, the court is to construe the evidence in the light most favorable to the government, assuming its credibility, and drawing all favorable inferences from it, and will sustain the jury's verdict if any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt." United States v. Penniegraft, 641 F.3d 566, 571-72 (4th Cir. 2011) (citing Jackson v. Virginia, 443 U.S. 307, 319, (1979) and United States v. Lomax, 293 F.3d 701, 705 (4th Cir. 2002)).

First, the motion is untimely. Rule 29(a) provides for a defendant's motion for judgment of acquittal after the close of the government's case, but before

submission to the jury. Here, the defendant made an oral motion at the close of the government's case, which the Court denied. When the defendant did not present any evidence, the case was submitted to the jury. The guilty verdict was returned on December 9, 2020, (Doc. No. 97), and the instant motion was filed December 10, (Doc. No. 99). Therefore, it will be dismissed as untimely.

Even if the Court were to consider the merits of the post-verdict motion, as provided in Rule 29(c)(1), the Court would deny it. The summary of facts in the government's response, (Doc. No. 100 at 1-3), is consistent with the trial evidence and sufficient to support the jury's verdict on each count.

IT IS, THEREFORE, ORDERED that the defendant's Motion for a Judgment of Acquittal, (Doc. No. 99), is **DISMISSED**.

Signed: December 15, 2020



Robert J. Conrad, Jr.
United States District Judge

